USTELECOM
THE BROADBAND ASSOCIATION

January 31, 2013

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Connect America Fund, WC Docket No. 10-90**

Dear Ms. Dortch:

This letter is submitted in response to a request from the Wireline Competition Bureau ("Bureau") in a December 17, 2012, meeting with representatives of USTelecom, AT&T, CenturyLink, FairPoint, Verizon and Windstream ("the industry representatives").[1] It is an explanation of data being transmitted to you under separate cover, individually, by the industry representatives.

As discussed in the December 17 meeting, certain language in the *USF/ICC Transformation Order* ("*Order*") and rules appears to direct companies to allocate frozen IAS and frozen ICLS annually, at amounts equal to 2011 support levels, to the calculation of interstate access charges.[2] Other language in the *Order* and rules appears to directcarriers to spend increasingly larger amounts of frozen high-cost support on building and operating broadband networks in certain areas.[3] The industry noted to the Commission that the same funding cannot be applied to both purposes at the same time. The data to be submitted by the industry representatives is intended to illustrate the various effects of applying frozen Interstate Access Support ("IAS"), frozen Interstate Common Line Support ("ICLS") and Local Switching Support ("LSS") toward broadband deployment versus toward their originally intended purposes.[4]

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[1] *See* Letter from Jonathan Banks, Senior Vice President, Law and Policy, USTelecom, to Marlene Dortch, Secretary, FCC, Docket No. 10-90 (December 20, 2012).

[2] *See* 47 C.F.R. § 54.312(a)(3) and para. 152.

[3] *See* 47 C.F.R. § 54.313(c)(2)-(4). In 2013, price cap carriers are to spend one-third of their frozen high-cost support on broadband. In 2014 and 2015, the share of frozen high-cost support that is to be spent toward broadband increases to two-thirds and 100 percent, respectively.

[4] If the Bureau clarifies that funding associated with these access programs should continue to be used for their original purpose then it must also clarify that carriers do not have an obligation to file section 54.313(a) annual reports in study areas where this is the only funding received.

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In the December 17 meeting, the industry representatives urged the Bureau to clarify that frozen IAS and frozen ICLS, discussed in sections 54.312 and 54.313, should be used for the purpose for which they were designed: to compensate carriers for required reductions in interstate access charges and mandated limits on end-user charges.[5] Carriers receiving LSS, which include formerly rural ILECs that converted to price caps as well as rural ILECs that are treated as price cap ILECs under the *Order* because they are affiliated with a price cap carrier require the same clarification.[6]

If carriers are required to apply one-third of frozen IAS toward broadband rather than toward constraining end-user charges, such carriers would be required to raise Subscriber Line Charges ("SLCs") in study areas where they are not already at the cap. In those study areas, consumers will see end user rate increases that in some cases are substantial. In other study areas, where SLCs are already at or near the maximum levels set by the Commission's rules, end user rates will not rise significantly, but carriers would be denied appropriate recovery because of the SLC, PICC and CCL limitations embodied in the rules.[7]

None of the impacts shown in the submitted data are beneficial for voice customers. We believe that the overall purpose of the *Order* is best achieved by continuing to use IAS, ICLS and LSS to compensate carriers for required reductions in interstate access charges and mandated limits on end-user charges. Most importantly, however, the industry representatives urge the Bureau to quickly identify which of the conflicting rules/language should apply.

If the Bureau chooses to require carriers to apply a portion of the access replacement funding to broadband deployment, the industry representatives urge the Bureau provide a real opportunity for carriers to fully use those funds. This can be accomplished by permitting carriers

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[5] Although the treatment of frozen ICLS for carriers that have converted to cap regulation is slightly different than for legacy IAS study areas, the intent of frozen ICLS is identical: to constrain end-user charges. Legacy IAS treatment is outlined in Commission rules, while price cap ICLS treatment is generally addressed in each company's respective waiver order, which is the effective rule for that company.

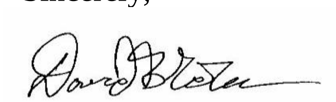
[6] Under existing procedures, a carrier receiving frozen LSS is using it in full to reduce its Eligible Recovery amount pursuant to section 51.915 or section 51.917. As such the frozen LSS is used in full to reduce and eliminate ARC and/or CAF-ICC funding. If a portion of the frozen support is used for the carrier's one-third spending obligation, it cannot also be used to offset Eligible Recovery and will result in increased ARCs and/or CAF-ICC funding requirements. If "frozen-high cost support" is deemed to include IAS, ICLS and LSS, the section 54.313(c)(2) requirement directing spending of frozen high-cost support on broadband would apparently conflict with existing rules or procedures.

[7] Carriers who receive frozen ICLS support pursuant to the terms of their price cap conversions are not permitted to make up support reductions through increases in SLCs if their frozen ICLS is repurposed toward broadband. Even assuming such carriers are able to obtain waivers of their conversion orders in order to raise end user rates, as with IAS, they would be constrained in many study areas by the SLC, PICC and CCL limitations. Carriers receiving LSS will no longer reduce the Eligible Recovery amounts (associated with the ICC transition) resulting in a higher Eligible Recovery amount, and therefore higher ARCs unless the ARCs are already at the maximum amount, and higher CAF-ICC amounts.

to certify on a holding company level rather than at the study area level, that the applicable amount of frozen high-cost support and CAF-ICC Support, where applicable, is being used to build and operate broadband networks in areas where there is no unsubsidized competitor. If such certification is required on a study area level, there are some study areas, in which all or nearly all of the census blocks are reported to have unsubsidized competition, where carriers would not be able to make such a certification and thus would have to forego the support. Some industry representatives will submit data to demonstrate this effect, which would lead to diminished broadband investment in contravention of the Commission's goals.

Whichever path the Bureau chooses, it should do so and take any steps necessary to implement that decision without delay in order to ensure that the funds are fully spent for purposes beneficial to consumers and consistent with the *Order*.

Sincerely,



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